IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7223 of 1996
With
SPECIAL CIVIL APPLICATION No. 6168 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT M DESAI & 11 - Petitioner(s)
Versus
FOOD CORPORATION OF INDIA & 1 - Respondent(s)

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Appearance :
MR CL SONI for Petitioner(s) : 1 - 12.- for Petitioner(s) : 8.2.1
MR YF MEHTA for Respondent(s) : 1-2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 06/09/2007

COMMON ORAL JUDGMENT

1. The petitioners herein have challenged the clarificatory circular issued by the Deputy Manager(EP), Food Corporation of India-the respondent

herein explaining the implementation of the fixation of pay scales in case of the employees who were beneficiary of the scheme for providing incentives to the employees acquiring additional qualifications during their service in the Corporation promulgated vide circular No. 40 of 1985 dated 22.07.85 on the ground that the interpretation said to be attached to the circular by way of clarificatory circular impugned in these matters is infact inadmissible as it runs counter to the very purpose of providing incentive to the employees to acquire professional qualifications while they are in the service of the Corporation.

2. Mr C.L Soni, learned advocate appearing for the petitioners has submitted that the clarificatory circular impugned in these petitions is issued by the authority and not the Board and therefore the authority has no power to attach interpretation to the original circular curtailing the benefit of incentive otherwise available under the scheme. He has submitted that the benefit of increment admissible under the incentive scheme is to be perpetuated even if the employees are promoted as otherwise it would result into an anomalous situation and therefore the circular impugned in these petitions deserves to be quashed and set aside.

2.1 Mr Soni has further submitted that the word 'merger' is to be treated as to be continued benefit even after promotion and therefore this anomalous

situation cannot be in consonance with the solemn intention of the authority who promulgated the original circular of incentive of two increments to the employees acquiring higher qualification during their service with the Corporation.

3. Mr Yogesh Mehta, learned advocate appearing for the respondent Corporation has submitted that the Corporation has branches through out India and the clarificatory circular has been accepted and implemented in case of all the employees who are similarly situated as the petitioners herein. He has also submitted that the incentive was never intended to be perpetuated as it was to be given so as to encourage the employees who acquire professional qualifications for creating a pool of qualified professionals which may help the Corporation in discharging its functions in a more professional way.

3.1 Mr Mehta has further submitted that therefore the reading of the original scheme itself would go to show that the employment of the phraseology of merging in the promotional scale would itself show that the employees once promoted may not continuously get the benefit of two increments in the promotional post. He has submitted that therefore the petitions deserve to be dismissed.

4. This Court has heard learned counsel for the parties at length and perused the documents on record. The scheme originally promulgated vide

circular no. 40 of 1985 dated 29.07.85 under the head 'Incentive Admissible' reads as “... The incentives offered under this scheme would be in the form of two special increments as 'Personal Pay', to be merged in pay at the time of promotion to the next higher grade...”.

4.1 The aforesaid phraseology indicates that the two increments are firstly to be treated as special increments and the said granting of two increments is also clarified to be treated as 'Personal Pay'. The employment of the word 'Personal Pay' itself goes to denote that the increments were not to be given and the benefit of increment was not to be perpetuated even in the next promotional post. Had this been the intention as Mr Soni, learned advocate appearing for the petitioners, has canvassed then the couching of the very circular would have been sufficient if it would have said that the employees acquiring professional qualifications during their service with the Corporation would be entitled and eligible to receive two additional increments. That would have served the purpose and there was no requirement of adding the words 'Special increments' and 'Personal Pay'. The very employment of the words 'Special increments' and 'Personal Pay' go to denote that the incentive was offered to the employees so that they may get impetus for acquiring professional qualifications but this granting of incentive was not to be perpetuated and reflected in the promotional posts. It was a kind of one time inentive for

encouraging the employees to acquire additional professional qualifications for efficiently discharging their duties in a professional manner in the Corporation.

5. In view of the aforesaid, the clarificatory circular impugned in these petitions does not seem to be suffering from any infirmity but the same is merely clarifying the artificial anomaly created by some of the employees and therefore the same cannot be said to be in any way derogatory to the principles of original circular of providing incentives. The petitions therefore deserve to be dismissed.

6. Mr Soni has submitted that because of the clarificatory circular the recovery was ordered and he submits that the recovery may not be permitted. It deserves to be noted that the fixation of the employees like the present petitioners was ordered by the competent officer of the Corporation wherein no fault of the petitioners could be said to have been responsible. In such a situation, the recovery of the amount of dues would certainly not be in the interest of justice and therefore while dismissing the petitions, this Court is of the view that the Corporation may not be permitted to recover the amount of dues, if any.

7. In the premises aforesaid, the petitions are dismissed. Rule is discharged.

(S.R.BRAHMBHATT, J.)

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